

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF VERMONT

JOHNNY HA, JENNY PHAM a/k/a :  
JENNY HA, and HELEN LE, :  
:  
Plaintiffs, :  
:  
v. : Case No. 2:20-cv-155  
:  
TINA CONN, :  
:  
Defendant. :

**OPINION AND ORDER**

On June 6, 2023, the Court ordered Defendant Tina Conn to pay Plaintiffs' attorney's fees and costs related to certain portions of this litigation. After Plaintiffs' counsel submitted his fees and costs *in camera*, the Court issued an Order on August 17, 2023 requiring payment by Ms. Conn in the amount of \$27,678.80. The Order stated that payment must be made within 30 days, and that "[a] payment plan to which all parties agree will be allowed." ECF No. 95 at 6.

Ms. Conn does not contest that she owes the fees and costs as ordered. She submits, however, that she cannot make the full payment and moves the Court to allow a payment plan. ECF No. 97. Plaintiffs do not consent to such a plan and move the Court to enter a default and default judgment on the basis of Ms. Conn's failure to pay. ECF No. 96.

Ms. Conn has submitted an affidavit in which she attests that her monthly expenses exceed her monthly income by approximately \$3,100. Nonetheless, she has reviewed her financial information with her accountant and has determined that she is able to pay \$768.85 over 36 months to satisfy the Court's Order. ECF No. 97-3. Plaintiffs object on several grounds, arguing that Ms. Conn missed the deadline for moving to reconsider, that Rule 60 provides her no basis for relief, and that she has failed meet her burden of showing an inability to pay.

The Court's prior Order specifically allowed for a payment plan upon agreement of the parties. To the extent that the Order requires modification to allow for a court-ordered payment plan, the Court has inherent authority to modify its orders prior to final judgment. See *Marconi Wireless Telegraph Co. v. United States*, 320 U.S. 1, 47-48 (1943); *John Simmons Co. v. Grier Brothers Co.*, 258 U.S. 82, 88 (1922). The Court finds that the new information set forth in Ms. Conn's affidavit provides cause for allowing a payment plan, and that the plan she proposes is reasonable.

Accordingly, the motion to approve a payment plan (ECF No. 97) is granted, and the motion for default and default judgment based upon Ms. Conn's failure to pay (ECF No. 96) is denied. The parties shall bear their own fees and costs with respect to

each motion, and the Court declines to enter additional monetary sanctions as requested by Plaintiffs. Ms. Conn shall make her first payment on or before November 15, 2023, with each subsequent payment to arrive on or before the 15<sup>th</sup> day of each month. The Court will consider any payment that arrives more than five days late as grounds for additional sanctions, which may include the entry of a default judgment.

A discovery conference, with counsel of record, is now scheduled to take place on Monday, November 6, 2023 at 10:00 a.m.

DATED at Burlington, in the District of Vermont, this 23<sup>rd</sup> day of October, 2023.

/s/ William K. Sessions III  
William K. Sessions III  
U.S. District Court Judge